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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/690,799	10/21/2003	Richard B. Jensen	41089-Simplot	5626

7590

12/21/2004

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EXAMINER

ALIE, GHASSEM

ART UNIT PAPER NUMBER

3724

DATE MAILED: 12/21/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/690,799

Applicant(s)

JENSEN ET AL.

Examiner

Ghassem Alie

Art Unit

3724

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 October 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 October 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1, 7-12, and 18-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodward, JR., et al. (2,859,784) in view of Galland et al. (4,391,172), hereinafter Galland. Regarding claim 1, Woodward teaches a rotary slicing machine including a rotary impeller 43 for carrying food into cutting engagement with at least one slicing knife 66. Woodward also teaches a plug prevention member 11 extending at least partially at the inlet of the rotary impeller 43 at a location disposed substantially off-axis relative to an axis of rotation of impeller 43. The chute 11 is defined as a plug prevention member since it allows only a certain number of potatoes enters into the impeller's cavity. Woodward also teach that the impeller 43 is being movable relative to the plug prevention member whereby food lodged against the impeller 43 is carried by the impeller into the impeller cavity. See Figs. 1 and 2 and col. 2, lines 1-64 in Woodward. Woodward does not teach that the rotary impeller has a throat inlet having a throat wall defining an upwardly open inlet throat for inflow passage of a succession of food products to be cut. However, the use a rotary impeller having a throat wall and an upwardly open inlet throat is well known in the art such as taught by Galland. Galland teaches a rotary impeller 22 impeller having a throat wall 64 defining an upwardly open inlet throat for inflow passage of a succession of food products 12 to be cut.

Art Unit: 3724

See Figs. 1 and 2 in Galland. It would have been obvious to a person of ordinary skill in the art to provide Woodward's cutting device with throat wall as taught by Galland in order to facilitate the guiding of the food products inside the cavity of the rotary impeller.

Regarding claim 7, Woodward teaches everything noted above including that the plug prevention member is stationary.

Regarding claim 8, Woodward as modified by Galland teaches everything noted above including that the plug prevention member 11 extends at least partially into throat 64, as taught by Galland, at a location spaced from the throat wall substantially less than a narrow dimension of the food product. See Fig. 1 in Woodward and Galland.

Regarding claim 9, Woodward teaches everything noted above including that the food products includes potatoes.

Regarding claims 10 and 11, Woodward as modified by Galland teaches everything in claims 1 and 9.

Regarding claim 12, Woodward as modified by Galland teaches everything noted above including a machine frame 13 and the rotary impeller includes a central cavity. See Fig. 1 in Woodward. Woodward as modified by Galland does not teach that the knife means mounted at a periphery of the rotary impeller. Woodward teaches that the knife means 66 is at the periphery of the rotary impeller 43 but it is not mounted to the rotary impeller. However, the use of a knife means mounted at the periphery of a rotary impeller is well known in the art such as evident by Galland or Joulin (2,932,227).

Regarding claims 18-20, Woodward as modified by Galland teaches everything in claims 7-9.

Art Unit: 3724

3. Claims 2-6 and 13-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Woodward in view of Galland, as applied above, in further view of Burch, Jr. (5,385,074) or Bogie (2,631,785). Regarding claim 2 and 13, Woodward as modified by Galland teaches everything noted above except that the plug prevention member includes an elongated rod. However, the use of rod to guide food products is well known in the art such as taught by Burch or Bogie. Bruch teaches a rod 42 as a plug prevention member which is extended into an upwardly inlet throat of a rotary impeller. The impeller includes a guide plate 52 and the rods 42 are extended into the impeller. See Figs. 1-3 in Bruch. Bogie also teaches a rod 15, 15' that guides the food products in conjunction with the plate 16, 16'. See Fig. 1 in Bogie. The jaws 15, 16 and 15', 16' are capable of guiding the food products without crushing them. It would have been obvious to a person of ordinary skill in the art to provide Woodward's cutting device, as modified by Galland with an alternative plug prevention member as taught by Bruch or Galland, since the plug prevention members as taught by Bruch or Galland works the same as Woodward's plug prevention member.

Regarding claims 3 and 14, Woodward as modified above teaches everything noted above including that the rod, as taught by Bogie or Bruch is parallel to a rotation of the rotary impeller 43. See Fig. 1 Woodward, Bruch, and Bogie.

Regarding claims 4 and 15, Woodward as modified by Galland and Bruch teaches everything noted above including that the rod, as taught by Bruch, is generally above the rotary impeller with a lower end of the rod extending downwardly into the inlet throat. See Fig. 1 in Bruch.

Art Unit: 3724

Regarding claims 5, 6, 16 and 17, Woodward as modified by Galland and Bogie teaches everything noted above including that the rod, as taught by Bogie, has a supporting means 27, 27' which is adjustable and removably supports the rod 15, 16. See Fig. 1 in Bogie.

Response to Amendment

4. Applicant's arguments filed on 10/12/04 have been fully considered but they are not persuasive.

Applicant's arguments that Woodward in view of Galland does not teach that the rotary impeller has a throat wall defining an upward inlet throat for inflow passage of a succession of food product are not persuasive. Woodward has a impeller 43 and a plug prevention member 11 which is extending at least partially into the inlet of the impeller at a location disposed substantially off-axis relative to an axis of rotation of the impeller 43. Woodward does not teach that the impeller has a throat wall defining an upwardly open inlet throat. However, Galland teaches an impeller 22 having a throat wall 64 defining an upwardly open inlet throat for inflow passage of a succession of food products 12. See Fig. 1 and col. 5, lines 15-27 in Galland. The upwardly open inlet throat 64 rotates with the impeller 22. Therefore, It would have been obvious to a person of ordinary skill in the art to provide Woodward's impeller with the upwardly open inlet throat as taught by Galland in order to guide the falling food product into the impeller.

Applicant's argument that Galland teaches " a rotary impeller mounted within a non-rotating or stationary housing which defines an upwardly open inlet" is incorrect. It appears that Applicant's assumes the component 60 and 64 are not rotating. However, plate

Art Unit: 3724

54 is the lower plate or base plate of the impeller 22 and the plate 60 is the upper plate of the impeller 22 and both of these plates are rotating components of the impeller 221. See col. 5, lines 1-27 in Galland. The paddles 62 connect the upper and lower plates of the impeller together. See col. 5, lines 28-39 in Galland. The upwardly inlet throat 64 is connected to the upper plate 60 and consequently rotates with the impeller.

Applicant's argument that Woodward's chute 11 is not a plug prevention member is not persuasive. As discussed above, the chute 11 is defined as a plug prevention member since it allows only a certain number of potatoes enters into the impeller's cavity. The chute 11 naturally prevents many potato fall into the cavity of the impeller at the same. In addition the use of plug prevention member is well known in the art such as taught in Bruch and applied to claims 2-6 and 13-17.

Conclusion

5. THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Art Unit: 3724

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Arrasmith et al. (2002/0144584) and Bucks (2003/0145698) teach a impeller for use in a rotary slicing machine.


Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ghassem Alie whose telephone number is (571) 272-4501. The examiner can normally be reached on Mon-Fri 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Allan Shoap can be reached on (571) 272-4514. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 872-9302 for regular communications and (703) 872-9302 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1148.

GA/ga

December 15, 2004


Allan N. Shoap
Supervisory Patent Examiner
Group 3700